IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.1410 of 2006

Shri Mansukhlal Vora — Applicant
Vs.
Shri Chandrakant B. Parekh & anr. — Respondents

Mr.S.P.Kadam for applicant.
Mr.P.R.Naidu for resp.no.1.
Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 16, 2007.

P.C.

. Heard Mr.Kadam, the learned counsel for the applicant who is seeking special leave to appeal against the order of acquittal passed by the learned Metropolitan Magistrate, 44th Court, Andheri in C.C. No.208/S/1996. The said complaint was filed under Section 138 of the Negotiable Instruments Act, 1881 against the present respondent no.1 on account of dishonour of the following three cheques:

Sr.No.	Cheque No.	Date	Amount
1.	243989	08/4/96	Rs.1,40,000/-
2.	243990	18/4/96	Rs.1,60,000/-
3.	243991	30/4/96	Rs.1,70,000

The total amount of the dishonoured cheques is Rs.4,70,000/-

. The complainant examined himself as PW 1, PW 2 - Harshad Babulal Ajmera and PW 3 - Shrikant Krishna Sarode in support of his case. Whereas the accused also examined two witnesses i.e. D.W. 1 - Yogesh Maganlal Sanghvi and D.W. 2 - Mahavir Prasad Jahangir, in defence of his case that he had not issued the dishonoured cheques and that there was no legally enforceable liability.

. In the complaint filed by the present applicant it was clearly stated that the accused - respondent no.1 represented him to be a broker and purchased goods for various parties. The challans and bills / invoices were taken by the accused for the other parties besides the accused and as the payments were not forthcoming investigations were made and then the accused broke down and he issued the subject cheques. However, while in the witness box PW 1 - the complainant admitted that the accused was not a broker and that he himself was buying the material and received the goods for transporting to

the other parties. In the cross-examination PW 1 admitted that he did not have any document to show that he has sold any goods to the accused. Similarly PW 2 stated in the examination-in-chief that the complainant had not sent the goods directly to the parties at any time and the accused used to give the orders of supply of goods to the parties and used to take delivery of the goods. But in the cross-examination he admitted that he did not take any delivery challan bearing the signature of the accused. The PW 1 also admitted that he had not paid any commission or brokerage to the accused. DW 1 and DW 2 stated before the Court that the accused was only acting as a broker between the parties like Shri Balaji Steel and others who were buying steel from the complainant. On assessment of this evidence the trial Court, therefore, recorded a finding that the cheques dishonoured could not be said to have been issued against any legally enforceable liability. It is also not disputed that in respect of the recovery of the amount of Rs.4,70,000/- covered by the dishonoured cheques, civil suit was filed and the proceedings are now pending before this Court.

. On these obtaining circumstances, it is clear

that the reasoning set out by the trial Court does not call for any reconsideration at the hands of this Court and, therefore, leave to appeal is refused.

The application is rejected accordingly.

(B.H.MARL